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FEDERAL DEPOSIT INSURANCE CORPORATION, AS

RECEIVER FOR SILICON VALLEY BANK.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL B. ROTHENBERG, an
individual;

Plaintiff and Cross-Defendant,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for Silicon
Valley Bank, a corporation, and DOES 1
through 10, inclusive,

Defendant and Cross-Complainant.

Case No. _____

**NOTICE OF REMOVAL FROM
THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR
THE COUNTY OF SANTA CLARA
PURSUANT TO 12 U.S.C. §
1819(b)(2)**

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that pursuant to 12 U.S.C. § 1819(b)(2), the Federal Deposit
4 Insurance Corporation, an agency of the United States of America, in its capacity as receiver for
5 Silicon Valley Bank (“FDIC-R”), defendant and cross-complainant in the matter of *Rothenberg*
6 *v. Silicon Valley Bank*, Santa Clara Superior Court, Case No. 19CV355568 (which was
7 consolidated with lead case *Silicon Valley Bank v. Rothenberg Ventures, LLC*, Case No.
8 19CV343268), hereby removes *Rothenberg v. Silicon Valley Bank*, Santa Clara Superior Court,
9 Case No 19CV355568 from the Superior Court of California, County of Santa Clara, to this Court.

10 **I. BACKGROUND**

11 **A. The Parties**

12 Silicon Valley Bank was a corporation organized and existing under the laws of the State
13 of California, with its principal place of business in the County of Santa Clara, State of California.

14 Plaintiff Michael B. Rothenberg is an individual. He founded and managed Rothenberg
15 Ventures Management Company (“RVMC”), an investment advisory firm that was the manager
16 of certain venture capital funds, including but not limited to, Rothenberg Ventures 2015 Fund,
17 LLC (the “2015 Fund”).

18 **B. The State Court Action**

19 On August 20, 2018, Rothenberg, RVMC, the 2015 Fund, and Rothenberg Ventures
20 2016 Accredited Fund LP (the “2016 Fund”) filed the Complaint in this matter against Silicon
21 Valley Bank (“SVB”). Rothenberg alleged that contrary to his instructions to SVB to place
22 \$4.25 million of funds that would serve as collateral for a line of credit for RVMC into an
23 account owned by the 2015 Fund, SVB transferred those funds without authorization into an
24 account owned by RVMC. Rothenberg alleged that this created the false appearance that
25 Rothenberg had embezzled money from the 2015 Fund and that this damaged his reputation.

26 The State Court permitted the 2015 Fund and 2016 Fund to proceed with a First
27 Amended Complaint while Rothenberg and RVMC proceeded with the original Complaint. The
28 First Amended Complaint was amended and replaced with the Second Amended Complaint

solely on behalf of the 2015 Fund. The 2015 Fund, 2016 Fund, and RVMC dismissed their claims against SVB with prejudice and are no longer in the case. Thus, the original Complaint is the operative complaint with respect to Rothenberg, who is the sole remaining plaintiff in the action.

On January 4, 2021, SVB filed a cross complaint against Rothenberg, which it amended on March 8, 2021. The cross complaint seeks, among other things, equitable indemnity from Rothenberg for SVB's settlement with RVMC, the 2015 Fund, and 2016 Fund for their respective claims against SVB in this action.

On July 23, 2020, the Court consolidated this action with *Silicon Valley Bank v. Rothenberg Ventures, LLC*, Santa Clara Superior Court, Case No. 19CV343268. That case was dismissed with prejudice on August 18, 2021.

C. The Receivership

On March 10, 2023, the California Department of Financial Protection and Innovation closed SVB and appointed the Federal Deposit Insurance Corporation as receiver.

By operation of federal law, upon its appointment, the FDIC-R succeeded to all of SVB's liabilities, rights, titles, powers, privileges, and assets, including SVB's interest and status as both the Defendant and Cross-Complainant in this Action. *See* 12 U.S.C.

§§ 1821(d)(2)(A) and (B). On March 23, 2023, the FDIC-R filed a notice of substitution of party in the State Court, thereby effectuating its substitution into the place and stead of SVB.

II. BASIS FOR REMOVAL

The above-captioned Action is removable by the FDIC-R under 12 U.S.C. § 1819(b)(2)(B), which states, in relevant part, the following:

(B) Removal

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

12 U.S.C. § 1819(b)(2)(B).

A. The Removal is Timely

This Notice of Removal is timely under 12 U.S.C. § 1819(b)(2)(B) because it is filed within ninety days of the date the FDIC-R was substituted into the Action as a party, March 23, 2023. Moreover, removal to this particular Court is appropriate, as this action was pending in the Superior Court of California, Santa Clara County, which is located in the Northern District of California.

B. State Court Record

Pursuant to 28 U.S.C. § 1446(a), a copy of all pleadings, process, and orders filed or issued in connection with this action and which the FDIC-R has in its possession are attached hereto as Exhibit A.

C. Miscellaneous

Pursuant to 28 U.S.C. § 1446(d), the FDIC-R will file in the State Court, and serve on all parties to this action, a copy of this Notice of Removal.

The FDIC-R is not required to obtain consent of the other parties in order to effectuate removal pursuant to 12 U.S.C. § 1819(b)(2)(B).

Finally, under 12 U.S.C. § 1819(b)(4), the FDIC-R is exempt from paying a filing fee in connection with this removal.

Dated: April 4, 2023

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